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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,205	10/29/2001	Richard Anthony Godwin Smith	37945-0024	2596

26633 7590 02/11/2004

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EXAMINER

SNEDDEN, SHERIDAN

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/936,205

Applicant(s)

SMITH ET AL.

Examiner

Sheridan K Snedden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11/27/01 6) ☐ Other: \_\_\_\_

1/20/02, 1/25/02

### DETAILED ACTION

1. Applicant's election of invention III, claim 9 is acknowledged. Claims 1-8 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **with** traverse in Paper filed 1 December 2003. However, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claim 9 is under examination.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Mossakowska *et al.* (WO 98/39433). Mossakowska *et al.* teach a soluble polypeptide CR1 and CR-1-like polypeptides comprising of one to four short consensus repeats (SCR). Thus, these peptides possess two or more heterologous membrane binding elements that would inherently possess low membrane affinity and the capability to interact independently with thermodynamic additivity. Mossakowska *et al.* also provides a method of delaying hyperacute allograft or hyperacute xenograft rejection in a human or non-human animal which receives a transplant by administering an effective amount of a polypeptide or derivative. Such administration may be to

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the patient or by application to the transplant prior to implantation (see page 20, page 22, lines 13-19 and page 23 lines 22-26). Thus, the reference anticipates the claimed invention.

4. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith *et al.* (WO 98/02454). Smith *et al.* teach soluble derivatives of soluble polypeptides incorporating membrane binding elements, their use in therapy and methods and intermediates including peptide membrane binding elements. Smith *et al.* provide the example of a CR1 polypeptide that possesses two or more heterologous membrane binding elements and that would inherently possess low membrane affinity and the capability to interact independently with thermodynamic additivity. The polypeptides and derivatives are used in a method of delaying hyperacute allograft or hyperacute xenograft rejection in a human or non-human animal which receives a transplant by administering an effective amount of a soluble complement inhibitor, such as a soluble CR1 polypeptide derivative. Such administration may be to the patient or by application to the transplant prior to implantation (see page 25, lines 30-35; page 23, lines 11-15). Thus, the reference anticipates the claimed invention.

### ***Conclusion***

5. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (571) 272-0959. The examiner can normally be reached on Monday - Friday, 8:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571) 272-0951. The fax phone number for regular communications to the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS  
January 27, 2004

A handwritten signature in black ink, reading "Karen Cochrane Carlson" followed by a stylized monogram or initials.

KAREN COCHRANE CARLSON, PH.D  
PRIMARY EXAMINER